

**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

KIRSCH RESEARCH AND
DEVELOPMENT, LLC,

Plaintiff,

v.

IKO INDUSTRIES, INC.;
IKO INDUSTRIES, LTD.,

Defendants.

C.A. No. 6:20-CV-317-ADA

JURY TRIAL DEMANDED

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court ORDERS that the following schedule will govern deadlines up to and including the trial of this matter:

Deadline	Item
DONE	Plaintiff serves preliminary ¹ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (i.e. the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
DONE	Deadline for Motions to Transfer.
December 10, 2020	Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are

¹ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

	directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s), and (3) summary, annual sales information for the accused product(s) for the prior two years, unless the parties agree to some other timeframe.
December 18, 2020	Parties exchange claim terms for construction.
January 4, 2021	Parties exchange proposed claim constructions.
January 8, 2021	Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall also identify the scope of the topics for the witness's expected testimony. ² With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
January 15, 2021	Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
January 22, 2021	Plaintiff files Opening claim construction briefs, including any arguments that any claim terms are indefinite.
February 12, 2021	Defendant file Responsive claim construction briefs.
February 26, 2021	Plaintiff file Reply claim construction briefs.
March 12, 2021	Defendant files a Sur-Reply claim construction brief.
March 17, 2021	Parties submit Joint Claim Construction Statement. See General Issues Note #8 regarding copies of the briefing to the Court and technical adviser (if appointed).
March 26, 2021	Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ³
April 2, 2021	Markman Hearing, 1:30 p.m.
April 5, 2021	Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
May 14, 2021	Deadline to add parties.
May 28, 2021	Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.

² Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

³ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

July 23, 2021	Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims. (Note: This includes amendments in response to a 12(c) motion.)
October 1, 2021	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law Clerk to arrange a teleconference with the Court to resolve the disputed issues.
October 29, 2021	Close of Fact Discovery.
November 5, 2021	Opening Expert Reports.
December 3, 2021	Rebuttal Expert Reports.
December 24, 2021	Close of Expert Discovery.
December 30, 2021	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
January 7, 2022	Dispositive motion deadline and <i>Daubert</i> motion deadline. See General Issues Note #8 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
January 21, 2022	Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, discovery and deposition designations).
February 4, 2022	Serve objections to pretrial disclosures/rebuttal disclosures.
February 11, 2022	Serve objections to rebuttal disclosures and file Motions <i>in limine</i> .
February 18, 2022	File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, discovery and deposition designations); file oppositions to motions <i>in limine</i>
February 25, 2022	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
3 business days before Final Pretrial Conference.	File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .

	Final Pretrial Conference. The Court expects to set the Final Pretrial Conference within 2-4 weeks of the trial date.
	Jury Selection/Trial. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.

SIGNED this 11th day of December, 2020.


ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE